



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Habing et al.

Title: EXERCISE MACHINE PRESS
ARM

Appl. No.: 09/602,198

Filing Date: 22 June 2000

Examiner: Victor K. Hwang

Art Unit: 3764

RECEIVED
SEP 02 2004
TECHNOLOGY CENTER 3700

REQUEST TO VACATE PREMATURE FINAL REJECTION

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the designation of Final in the Office Action dated 4 June 2004, applicants hereby respectfully request the Assistant Commissioner to vacate this premature final rejection.

The present application describes an exercise machine press arm. The improved press arm allows an operator to perform either a traditional straight chest press exercise or to incorporate "butterfly" motion during the performance of the chest press exercise. A main arm is pivotally coupled to the frame of the exercise machine at a main pivot in the same manner as conventional press arms. The main arm includes a cross-beam to which a pair of handle arms are pivotally coupled at secondary pivots. The axes of the secondary pivots are orthogonal to the axis of the main pivot and are inclined with respect to vertical when the press arm is in a rest position. This inclination causes the handle arms to assume a natural rest position under the influence of gravity. The rest positions of the handle arms place the press arm handles at a comfortable starting position for performance of a press exercise. Stops to limit the inward or outward travel of the handle arms are not necessary. A source of exercise

resistance resists both forward motion of the press arm assembly and inward motion of the handle arms.

M.P.E.P. Section 706.07 titled, "Final Rejection" sets forth the requirements for a Final. M.P.E.P. Section 706.07 provides, "[b]efore final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. Section 706.07 goes on:

. . . present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. * * * The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.

In the Office Action of 21 October 2003, Claims 32-43, 46-57, and 63-67 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,456,644 to *Hecox*; further, Claims 32-37, 41, 44-51, and 58-62 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. D359,326 to *Deola*.

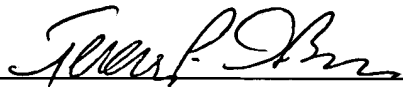
In the Office Action of 4 June 2004, Claims 32-36, 40, 42, 46, 49-55, 57, 60, 65, and 67 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,949,951 to *Deola*; Claims 32-36, 45-47, 49-51, 54, 59, and 60 were rejected under 35 U.S.C. § 102 as being anticipated by, or alternatively under 35 U.S.C. § 103 as being obvious over U.S. Patent No. D359,326 to *Deola*; Claims 32-34, 40, 42, 43, 46, 53-56, 60, and 65-67 were rejected under 35 U.S.C. § 102 as being anticipated by, or alternatively under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 5,643,152 to *Simonson*.

Thus, the Office Action of 4 June 2004 applied two new references (U.S. Patent No. 4,949,951 to *Deola* and U.S. Patent No. 5,643,152 to *Simonson*). The amendments following the Office Action of 21 October 2003 did not necessitate the new grounds for rejection as such rejections clarified the claims and therefore the final rejection is premature. Thus, the Applicant's amendment did not necessitate the new grounds for rejection and the

final rejection is premature. Thus, Applicant respectfully requests that the final rejection be vacated.

Respectfully submitted,

Date 26 August 2004
Precor Incorporated
Amer Sports North America
8700 W. Bryn Mawr Avenue
Chicago, IL 60631

By 
Terence P. O'Brien
Attorney for Applicants
Registration No. 43,840

Telephone: (773) 714-6498
Facsimile: (773) 714-4557



Atty. Dkt. No.: PFIT-1-15689

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Habing et al.

Title: EXERCISE MACHINE PRESS
ARM

Appl. No.: 09/602,198

Filing Date: 22 June 2000

Examiner: Victor K. Hwang

Art Unit: 3764

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

ED 086771984 US

August 26, 2004

(Express Mail Label Number)

(Date of Deposit)

Terence P. O'Brien

(Printed Name)

(Signature)

AMENDMENT TRANSMITTAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
SEP 02 2004
TECHNOLOGY CENTER 3700

Sir:

Transmitted herewith is a Reply in the above-identified application.

[X] Power of Attorney and Correspondence Address Indication Form PTO/SB/81 (1 Page).

[X] Statement Under 37 CFR 3.73(b), Form PTO/SB/96 (1 Page).

[X] Request to Vacate Premature Final Rejection (3 Pages).

[X] Reply to Office Action dated May 7, 2004 (9 pages).


[X] Postcard.

[X] Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 501959. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or

even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 501959.

Respectfully submitted,

Date 26 August 2004
Precor Incorporated
Amer Sports North America
8700 W. Bryn Mawr Avenue
Chicago, IL 60631

By 
Terence P. O'Brien
Attorney for Applicants
Registration No. 43,840

Telephone: (773) 714-6498
Facsimile: (773) 714-4557